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14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17
18 PETER RUDOLPH, individually and on behalf of)
all others similarly situated,)

19 Plaintiff,)
20)
21 v.)
22)

22 UTSTARCOM, INC., HONG LIANG LU, YING)
WU, MICHAEL SOPHIE, THOMAS TOY, and)
23 FRANCIS BARTON,)
24)

24 Defendants.)
25)
26)
27)
28)

CASE NO.: C-07-4578 SI

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than this litigation would be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated
6 Protective Order. The Parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords extends only to the
8 limited information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
10 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil
11 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will
12 be applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner generated, stored, or maintained (including, among other things, testimony,
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to
19 discovery in this matter.

20 2.3 “Confidential” Information or Items: information (regardless of how
21 generated, stored or maintained) or tangible things that qualify for protection under standards
22 developed under Fed.R.Civ.P. 26(c).

23 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
24 extremely sensitive “Confidential” Information or Items whose disclosure to another Party or non-
25 party would create a substantial risk of serious injury that could not be avoided by less restrictive
26 means.

27 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
28 from a Producing Party.

1 2.6 Producing Party: a Party or non-party that produces Disclosure or
2 Discovery Material in this action.

3 2.7 Designating Party: a Party or non-party that designates information or items
4 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
5 Confidential – Attorneys’ Eyes Only.”

6 2.8 Protected Material: any Disclosure or Discovery Material that is designated
7 as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

8 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
9 retained to represent or advise a Party in this action.

10 2.10 House Counsel: attorneys who are employees of a Party.

11 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
12 their support staffs).

13 2.12 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
15 witness or as a consultant in this action and who is not a past or a current employee of a Party or
16 of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an
17 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or
18 trial consultant retained in connection with this litigation.

19 2.13 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
21 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
22 subcontractors.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only Protected Material
25 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
26 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
27 parties or counsel to or in court or in other settings that might reveal Protected Material.
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1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
7 Party or non-party that designates information or items for protection under this Order must take
8 care to limit any such designation to specific material that qualifies under the appropriate
9 standards. A Designating Party must take care to designate for protection only those parts of
10 material, documents, items, or oral or written communications that qualify – so that other portions
11 of the material, documents, items, or communications for which protection is not warranted are
12 not swept unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that
14 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or retard the case development process, or to impose unnecessary
16 expenses and burdens on other parties), expose the Designating Party to sanctions.

17 If it comes to a Party's or a non-party's attention that information or items that it
18 designated for protection do not qualify for protection at all, or do not qualify for the level of
19 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
20 withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 Order (see, e.g., second paragraph of Section 5.2(a), below), or as otherwise stipulated or ordered,
23 material that qualifies for protection under this Order must be clearly so designated before the
24 material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of
27 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on each

1 page that contains protected material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
3 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level
4 of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY”).

6 A Party or non-party that makes original documents or materials
7 available for inspection need not designate them for protection until after the inspecting Party has
8 indicated which material it would like copied and produced. During the inspection and before the
9 designation, all of the material made available for inspection shall be deemed “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
11 documents it wants copied and produced, the Producing Party must determine which documents,
12 or portions thereof, qualify for protection under this Order, then, before producing the specified
13 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) on each page that contains
15 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
16 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
17 markings in the margins) and must specify, for each portion, the level of protection being asserted
18 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

19 (b) for testimony given in deposition or in other pretrial or trial
20 proceedings, that the Party or non-party offering or sponsoring the testimony identify all protected
21 testimony, and further specify any portions of the testimony as to which protection is sought, and
22 to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”), either on the record, before the close of
24 deposition hearing or other proceeding, or within 20 days after the receipt of the testimony
25 transcript.

26 Transcript pages containing Protected Material must be separately bound by
27 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
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1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-
2 party offering or sponsoring the witness or presenting the testimony.

3 (c) for information produced in some form other than documentary, and
4 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
5 the container or containers in which the information or item is stored the legend
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
7 portions of the information or item warrant protection, the Producing Party, to the extent
8 practicable, shall identify the protected portions, specifying whether they qualify as
9 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
11 to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the
13 Designating Party’s right to secure protection under this Order for such material. If material is
14 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party, on
16 timely notification of the designation, must make reasonable efforts to assure that the material is
17 treated in accordance with the provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
20 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
21 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
22 waive its right to challenge a confidentiality designation by electing not to mount a challenge
23 promptly after the original designation is disclosed.

24 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
25 Party’s confidentiality designation must do so in good faith and must begin the process by
26 conferring directly (in voice-to-voice dialogue; other forms of communication are not sufficient)
27 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
28 for its belief that the confidentiality designation was not proper and must give the Designating

1 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
2 change in designation is offered, to explain the basis for the chosen designation. A challenging
3 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
4 and confer process first.

5 6.3 Judicial Intervention. A Party that elects to press a challenge to a
6 confidentiality designation, after considering the justification offered by the Designating Party,
7 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
8 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
9 challenge. Each such motion must be accompanied by a competent declaration that affirms that
10 the movant has complied with the meet and confer requirements imposed in the preceding
11 paragraph and that sets forth with specificity the justification for the confidentiality designation
12 that was given by the Designating Party in the meet and confer dialogue.

13 Until the Court rules on the challenge, all parties shall continue to afford the
14 material in question the level of protection to which it is entitled under the Producing Party's
15 designation.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a non-party in connection with this case only for
19 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
20 disclosed only to the categories of persons and under the conditions described in this Order. When
21 the litigation has been terminated, a Receiving Party must comply with the provisions of Section
22 11 (FINAL DISPOSITION), below.

23 Protected Material must be stored and maintained by a Receiving Party at a
24 location and in a secure manner that ensures that access is limited to the persons authorized under
25 this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
27 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
28 disclose any information or item designated CONFIDENTIAL only to:

(a) the Receiving Party's Outside Counsel of record in this action which has signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A, as well as employees and professional vendors of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staffs to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(g) the author of the document or the original source of the information, and persons who were recipients of the document prior to its production by the Producing Party to the Receiving Party.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action which has signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A,

1 as well as employees and professional vendors of said Counsel to whom it is reasonably necessary
2 to disclose the information for this litigation;

3 (b) Experts (as defined in this Order) to whom disclosure is reasonably
4 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
5 Order" (Exhibit A);

6 (c) the Court and its personnel;

7 (d) court reporters and their staffs to whom disclosure is reasonably
8 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
9 Order" (Exhibit A); and

10 (e) the author of the document or the original source of the information.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
12 OTHER LITIGATION

13 If a Receiving Party is served with a subpoena or an order issued in other litigation
14 that would compel disclosure of any information or items designated in this action as
15 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
16 Receiving Party must so notify the Designating Party, in writing (by e-mail or fax, if possible)
17 immediately and in no event more than three court days after receiving the subpoena or order.
18 Such notification must include a copy of the subpoena or court order.

19 The Receiving Party also must immediately inform in writing the Party who caused
20 the subpoena or order to issue in the other litigation that some or all the material covered by the
21 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
22 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
23 caused the subpoena or order to issue.

24 The purpose of imposing these duties is to alert the interested parties to the
25 existence of this Protective Order and to afford the Designating Party in this case an opportunity to
26 try to protect its confidentiality interests in the court from which the subpoena or order issued. The
27 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
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1 confidential material – and nothing in these provisions should be construed as authorizing or
2 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

3 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
5 Protected Material to any person or in any circumstance not authorized under this Stipulated
6 Protective Order, the Receiving Party must immediately: (a) notify in writing the Designating
7 Party of the unauthorized disclosures; (b) use its best efforts to retrieve all copies of the Protected
8 Material; (c) inform the person or persons to whom unauthorized disclosures were made of all the
9 terms of this Order; and (d) request such person or persons to execute the “Acknowledgment and
10 Agreement to Be Bound” that is attached hereto as Exhibit A.

11 10. FILING PROTECTED MATERIAL

12 Without written permission from the Designating Party or a court order secured
13 after appropriate notice to all interested persons, a Party may not file in the public record in this
14 action any Protected Material. A Party that seeks to file under seal any Protected Material must
15 comply with Civil Local Rule 79-5.

16 11. FINAL DISPOSITION

17 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
18 after the final termination of this action, each Receiving Party must either destroy or return all
19 Protected Material to the Producing Party. As used in this subdivision, “all Protected Material”
20 includes all copies, abstracts, compilations, summaries or any other form of reproducing or
21 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
22 the Receiving Party must submit a written certification to the Producing Party (and, if not the same
23 person or entity, to the Designating Party) by the sixty day deadline that identifies (by category,
24 where appropriate) all the Protected Material that was returned or destroyed and that affirms that
25 the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms
26 of reproducing or capturing any of the Protected Material. Notwithstanding this provision,
27 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
28 memoranda, correspondence or attorney work product, even if such materials contain Protected

1 Material. Any such archival copies that contain or constitute Protected Material remain subject to
2 this Protective Order as set forth in Section 4 (DURATION), above.

3 12. INADVERTENT PRODUCTION OF PRIVILEGED MATERIAL

4 Inadvertent production or disclosure of documents or information subject to the attorney-
5 client privilege, work product immunity, or any other applicable privilege shall not constitute a
6 waiver of, nor a prejudice to, any claim – in this or any other proceeding – that such or related
7 material is privileged or protected by the work product immunity or any other applicable privilege,
8 provided that the Producing Party notifies the Receiving Party in writing within a reasonable time
9 after discovery of such inadvertent production. Upon receipt of such notice, all other Parties shall,
10 regardless of whether they agree with the Producing Party's claim of privilege or protection,
11 promptly: (a) destroy or segregate all copies of the inadvertently produced documents or material
12 in such Party's possession, custody, or control, and notify the Producing Party that it has done so;
13 and (b) notify the Producing Party that reasonable steps have been taken to retrieve and/or destroy
14 the inadvertently produced documents or material from other persons to whom such documents or
15 material have been provided, if any, consistent with Rule 26(b)(5)(B).

16 Compliance with this Section 12 does not, and shall not be deemed to, constitute
17 agreement that the claimed document or material is in fact privileged or entitled to protection or
18 immunity, and the Receiving Party may move the Court for an Order compelling production of
19 any inadvertently produced document or information. Such motion, however, shall not assert as a
20 ground for production the fact of the inadvertent production, nor shall the motion disclose or
21 otherwise use the content of the inadvertently produced document or information in any way.

22 13. MISCELLANEOUS

23 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the Court in the future.

25 13.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Protective Order no Party waives any right it otherwise would have to object to disclosing or
27 producing any information or item on any ground not addressed in this Stipulated Protective
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1 Order. Similarly, no Party waives any right to object on any ground to the use in evidence of any
2 of the material covered by this Protective Order.

3
4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 Dated: January 14, 2009

Respectfully Submitted,

6 WILSON SONSINI GOODRICH & ROSATI
7 Professional Corporation

8
9 By /s/ Bahram Seyedin-Noor
Bahram Seyedin-Noor

10
11 Terry T. Johnson
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1 Dated: January 14, 2009

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3 By: /s/ Mark Punzalan

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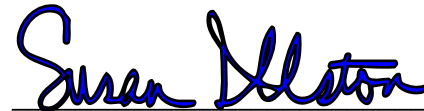
15 Telephone: (202) 337-8000

16 Facsimile: (202) 337-8090

17 Attorneys for Lead Plaintiff

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 DATED: _____

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The Honorable Susan Illston
United States District Court Judge

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____, 2009 in the case of *Rudolph v. UTStarcom, Inc. et al.*, No. C-07-4578 SI. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name _____
[printed name]

Signature: _____
[signature]

ATTESTATION

I, Bryan J. Ketrosier, am the ECF user whose identification and password are being used to file the [PROPOSED] STIPULATED PROTECTIVE ORDER. In compliance with General Order 45.X.B, I hereby attest that Bahram Seyedin-Noor and Mark Punzalan have concurred in this filing.

Dated: January 14, 2009

By: /s/ Bryan J. Ketrosier
Bryan J. Ketrosier